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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: JAN 20 2004

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may remain with his spouse and children in the United States.

The acting district director concluded that the applicant failed to establish extreme hardship would be imposed upon his U.S. citizen spouse and child if his waiver were denied. The application was denied accordingly. *See* Decision of District Director, dated January 30, 2003.

On appeal, counsel asserts that the applicant has established that his family will suffer extreme and unusual hardship if he is denied the waiver of inadmissibility.

The record includes a copy of the marriage certificate for the applicant and his wife; photographs from the couple's wedding; letters of support; copies of the U.S. birth certificates for the applicant's two children; a letter from the pastor of the church to which the applicant and his wife belong; copies of the baptismal certificate and member certificate for the applicant's church; letters verifying the applicant's employment; copies of school registration and job training certificates for the applicant; documentation evidencing the diagnosis of multiple sclerosis for the applicant's wife's brother; academic transcripts and school documentation for the applicant's older son; a copy of the medical diagnosis for the applicant's younger son; college transcripts for the applicant's wife; tax documentation for the couple and a letter from the applicant's wife. The entire record was considered in rendering a decision on this application.

The record reflects that:

On October 8, 1990, the applicant was arrested for robbery in violation of California Penal Code § 211. The applicant was sentenced to 36 months of probation.

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
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> > (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .
>
> (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provides a list of factors it deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. 22 I&N Dec. at 565-566.

Counsel contends that the applicant's wife and sons will suffer extreme hardship if they depart the United States and move to Mexico with the applicant. Counsel cites the need for the applicant's wife to remain in the United States to assist in the treatment of her brother who suffers from multiple sclerosis. Further, counsel states that the applicant's older son excels academically and would not have the same educational opportunities in Mexico that he enjoys in this country. Further, counsel asserts that the couple's infant child requires an operation that is possible in the United States and not in Mexico. *See* Appeal of I-601 Waiver Denial, dated March 2, 2003.

However, counsel does not establish extreme hardship to the applicant's wife and children if they remain in the United States. Counsel asserts that the family will suffer financial hardship as a result of losing the income from the applicant's employment. However, the record does not establish that the applicant cannot continue providing financially for his family from a location outside of the United States. The record also does not establish that the applicant's wife is unable to work fulltime and provide for her family. The applicant's wife states that she will have to work in a minimum wage job if her husband is deported. *See* Letter of Ana D. Romero, dated February 18, 2003. However, the record does not establish this assertion. On the contrary, the record demonstrates that the applicant's wife has been working toward her degree in nursing and has been enrolled in school for over eight years. *See* Transcripts of Ana D. Romero from Los Angeles Community College, dated February 27, 2003. The record establishes that the applicant's wife has completed a substantial amount of coursework and is entrusted with administering medication to her brother suffering with multiple sclerosis. The record infers that the applicant's wife will complete her degree in the near future and should be able to retain lucrative employment as a result.

Further, if the applicant's wife and children remain in the United States, the applicant's elder son will be able to continue receiving the education that the applicant and his wife seek for the child and the applicant's infant son will be able to undergo surgery as planned, if the surgery has not occurred to date.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's wife and children will endure hardship as a result of separation from the applicant. However, their

situation, if they remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record reflects that the applicant has failed to show that his U.S. citizen spouse and children would suffer extreme hardship if his waiver application were denied. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.